

# EXHIBIT 3

## Vorys, Sater, Seymour and Pease LLP

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January 30, 2007

**VIA FACSIMILE (202-318-7071)**

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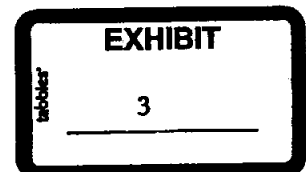
Re: Paula Pagonakis v. Express, LLC.  
United States District Court for the District of Delaware  
Case No. 06-027

Dear Jason:

We write in response to your email of January 26, 2007. As we stated in our email of yesterday, we believe there is some confusion as to our position on the issues you raised in our email of January 24, 2007.

First, with respect to Document Request Nos. 2, 3 and 29, and Interrogatories Nos. 3 and 5, we are not refusing to provide you with any information. We request clarification as to the scope of these discovery requests. Our position has been that we will not provide you with company-wide information, but we are willing to discuss a proper limitation. Your email of January 24, 2007, to which our January 26<sup>th</sup> letter responds, does not indicate any willingness to narrow the scope of these discovery requests. Your January 26<sup>th</sup> email however implies that you are agreeing to limit the scope of these discovery requests, specifically to Plaintiff's employing unit (Express' Coastland Mall store). If our interpretation of your email is correct and you are agreeing to limit the scope of these discovery requests to Express' Coastland Mall store, we can agree to provide you with a response. Please advise us of your position.

Further, so that that record is clear, it is inaccurate to state that we provided you with no information in response to these discovery requests. As set forth in our January 26<sup>th</sup> letter, we provided you information concerning the individuals involved in the allegations underlying Plaintiff's Complaint.



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With respect to Document No. 10, we are not withholding any documents on the basis of privilege. Our response was merely meant to be consistent with your request, seeking "all non-attorney-client privileged documents . . ."

With respect to Document Request Nos. 22 and 28, we discussed at length the production of the personnel files of Ms. Kessler, Ms. Klancic, Ms. Bosley and Ms. O'Neill. We explained that the entire contents of their personnel files is not relevant to the subject matter of the pending action. Our position is supported by the case law. See Chiaradonna v. Rosemont College, Civil Action No. 06-1015, 2006 WL 3742777, \* 2 (E.D. Pa. Dec. 11, 2006) (refusing to require disclosure of the entire personnel files, finding that a synopsis of prior complaints made about and any prior disciplines was sufficient); Kanaji v. Philadelphia Child Guidance Ctr. Of Children's Hosp., No. Civ. A. 00-937, 2001 WL 7088989 (E.D. Pa. June 20, 2001) (finding that only the information concerning the decision to terminate plaintiff's employment was discoverable); Kresefky v. Panasonic Comm. and Sys. Co., 169 F.R.D. 54, 66 (D.N.J. 1996) (discovery of personnel files must be limited to the allegations in Plaintiff's complaint).

Consistent with the case law and our prior agreement, we provided a synopsis of the disciplinary actions, where applicable, issued to Ms. Kessler, Ms. O'Neill and Ms. Bosley. We will provide you the same information for Ms. Klancic once we have reviewed her personnel file.

Finally, again, so that the record is clear, while you are correct that Ms. Klancic's employment was terminated, Ms. Klancic was not terminated based upon complaints of alleged disability or FMLA discrimination.

We believe this should resolve all your outstanding discovery issues. Thank you.

Very truly yours,

David A. Campbell

LLF/pf

cc: Lori L. Fauvie, Esq.  
Francis G.X. Pileggi, Esq.